Filed 8/10/10 In re James Y. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAMES Y., a Person Coming Under the Juvenile Court Law.	B218843 (Los Angeles County Super. Ct. No. FJ41384)
THE PEOPLE, Plaintiff and Respondent, v. JAMES Y., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Robert J. Totten, Commissioner. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

_____

The juvenile court sustained a petition alleging that James Y. (minor) committed the offenses of possession of a controlled substance (Ecstasy) for sale in violation of Health and Safety Code section 11378; possession of a controlled substance (methamphetamine) in violation of Health and Safety Code section 11377, subdivision (a); and possession of a controlled substance (cocaine) in violation of Health and Safety Code section 11350, subdivision (a). The juvenile court placed minor in a camp-community placement for a period not to exceed six years and two months.

Minor appeals on the ground that the evidence was insufficient to sustain the petition for possession for sale, and the juvenile court's finding denied him his right to due process, requiring reversal. We affirm.

FACTS

Prosecution Evidence

Officers from the Los Angeles Police Department and a probation officer went to minor's residence on July 30, 2009 at approximately 7:55 a.m. in order to conduct a probation compliance check.[1] A container found under minor's bed by Officer Shane Bua contained two small pills resembling Ecstasy. Officer Chui found two green canisters in a drawer in the bedroom closet. Officer Seth Goldstein inspected the green canisters and saw that they contained approximately 20 small pills that resembled Ecstasy, a white powdery substance resembling cocaine, and an off-white crystalline substance resembling methamphetamine. The substances were inside separate baggies.

Officer Goldstein found five cell phones on the bedside table. He also found approximately 25 three-inch plastic baggies in the dresser drawer. He found approximately $130 in minor's wallet.

---

[1] Minor had previously admitted allegations of possession for sale of a controlled substance in violation of Health and Safety Code section 11378 on March 19, 2008, and possession of a deadly weapon (a baton) in violation of Penal Code section 12020, subdivision (a)(1) on January 22, 2009.

Officer Goldstein testified as an expert with experience in the investigation of cases involving possession and sale of narcotics. This was the first time he had testified in court in regard to narcotics for sale. After voir dire of Officer Goldstein, the juvenile court found that he qualified as an expert with regard to narcotics packaging.

Officer Goldstein was of the opinion that minor possessed the narcotics for the purposes of sale. He based his opinion on the number of cell phones and empty baggies in minor's room and the amount of currency. Also, the quantity of pills exceeded that which a normal user would possess, and minor was on active probation for the sale of narcotics.

The parties stipulated that the substances were analyzed and found to consist of a white crystalline substance weighing .25 grams with the presence of methamphetamine, a white powdery material weighing 2.97 grams and showing the presence of cocaine, and a ziplock bag containing 20 pills weighing 5.97 grams and containing Ecstasy and Ketamine.

Defense Evidence

Minor took the stand and stated he was 16 years old and had been using drugs since he was 11 or 12 years old. He had been diagnosed with ADHD and was supposed to take medication, but he was not taking it at the time of the search and arrest. He had been in drug treatment, but he relapsed because it had been difficult to deal with the fact that he "caught two cases," that a friend of his died, and that he lost his girlfriend. Minor used marijuana, Ecstasy, cocaine, and methamphetamine. All of the Ecstasy was for his personal use, and he used seven pills during a night. As time went on he needed more and more to get high.

Minor said that his father gave him the $130 so that minor would not sell drugs. Minor stopped selling because he did not need money anymore. He had several phones because he bought a new phone when a phone ran out of minutes. He did not know that it was possible to buy more minutes. Minor did not recall having any clear plastic baggies in his drawer, and he never used that type of baggie even when he previously

sold drugs. He bought all his drugs for personal use with his father's money. Someone gave him the methamphetamine. Minor admitted that he used drugs during the time he sold drugs in the past.

Minor's father confirmed that he gave minor $20 a day and $50 to $100 on the weekends. He did not know minor was using drugs. He admitted telling the officers he did not know where minor was on the day of the search, although minor was in his bedroom.

DISCUSSION

I. Minor's Argument

Minor contends the juvenile court erred in finding the evidence sufficient to sustain the petition on the sales count, and the juvenile court erred in relying on improper expert testimony.

II. Proceedings Below

After the defense testimony concluded, the juvenile court stated to the prosecutor, "Argument. Mr. Curtis [the prosecutor], I have to say, it's thin, but they probably have rebutted the sales part." The prosecutor responded that, merely because minor took the stand and said he used drugs did not mean he did not sell drugs. The juvenile court said it understood that point. The prosecutor pointed out that minor admitted using Ecstasy, he had previously been found to possess marijuana for purposes of sale,[2] and he had a conviction for possessing Ecstasy for sale. The minor had $130, 25 plastic baggies, five cell phones, "months supply" of Ecstasy, and cocaine. "We're supposed to believe that he's somehow just has these for personal use because he buys them wholesale." The

---

[2] According to the probation report, a non-detained petition was filed against minor on May 18, 2007, for possession of marijuana or hashish for sale in violation of Health and Safety Code section 11359. The juvenile court granted deferred entry of judgment under Welfare and Institutions Code section 790, and minor was ordered home on probation.

juvenile court stated, "I agree." Apparently addressing defense counsel, the juvenile court said, "How do you like this argument; that is persuasive."

Defense counsel responded that only minor had the expertise to say how much Ecstasy he needed to take. Minor had admitted guilt in his prior cases without a hearing; therefore, there was something different about the current case, and minor's story made sense—it was different because minor now had money. The juvenile court pointed out that this time there was also a gang allegation. Defense counsel argued that there were no complaints about drug sales with respect to minor, and the drugs were found only because of the probation check. The baggies were not found until a second officer searched, which leads to the conclusion that they were left over from another time. Also, the officer who testified as an expert did not know very much about Ecstasy, and the minor was more of an expert than the officer.

The juvenile court stated, "Listening to the evidence, court does find that count one is true. I'm not persuaded by [minor's] comments. I do agree, probably he is the expert of Ecstasy and meth and cocaine and crack, because of his usage, but I'm unable to get past the phones, the baggies, the amount of the Ecstasy, though, in listening to him, I can understand what he's saying about the usage or his personal usage. With his record, his history, and these other items that seem to indicate or look strongly towards drugs, court finds count one, count two, count three is true."

III. Relevant Authority

The standard of appellate review for sufficiency of evidence was articulated in *People v. Johnson* (1980) 26 Cal.3d 557. When an appellate court seeks to determine whether a reasonable trier of fact could have found a defendant guilty beyond a reasonable doubt, it "'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*Id*. at p. 576.) The court does not limit its review to the evidence favorable to the respondent, but must resolve the issue in light of the whole record. (*Id*. at p. 577.) The court must also judge whether the evidence of each of the

essential elements of a crime is substantial. (*Ibid*.) "[S]ubstantial evidence" is evidence that is "reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*Id*. at p. 578.) The standard is the same when a petition has been sustained by the juvenile court. (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 577.)

Given this court's limited role on appeal, minor bears an enormous burden in claiming there was insufficient evidence to sustain the true finding. If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

IV. Evidence Sufficient

We disagree with minor. "'Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.] [Citations.] Intent to sell may be established by circumstantial evidence. [Citation.]'" (*People v. Harris* (2000) 83 Cal.App.4th 371, 374; see also *People v. Glass* (1975) 44 Cal.App.3d 772, 774.) The circumstantial evidence was sufficient in this case.

It is true that the juvenile court was initially leaning toward finding no intent to sell but was swayed by the prosecutor's argument. This, however, is the function of oral argument, i.e., "to help the [trier of fact] remember and interpret the evidence." (*United States v. DeLoach* (D.C. Cir. 1974) 504 F.2d 185, 189.) This is especially true in this case, where the prosecution evidence was presented on the first day of the adjudication hearing, and minor testified to his version of events on the following day. When reminded of the evidence from the prior session, the juvenile court reevaluated the circumstantial evidence and found it persuasive.

Officer Goldstein's expertise was based on little formal training, but he had sufficient experience from his police work and from his colleagues on which to base his opinion. He had been involved in approximately 200 narcotics-related investigations in four and a half years. He had spoken with narcotics detectives on many occasions about the packaging, recognition, and sales of narcotics. He had made 10 to 15 Ecstasy-related arrests, approximately four of which were for sales. The juvenile court specifically asked Officer Goldstein to relate his expertise with regard to packaging, sales, and distribution. Officer Goldstein told the juvenile court that a typical dose of Ecstasy is from one to two pills, and the dose lasts up to six hours. Officer Goldstein knew that Ecstasy is usually packaged separately, and the normal purchase for recreational use would be one or two pills. The juvenile court qualified the officer as an expert with regard to narcotics packaging and was satisfied that he had the expertise beyond that of a lay person.

Officer Goldstein gave credible testimony about the normal dosages and the quantities offered for sale. "It is well settled that '. . . experienced [police] officers may give their opinion[s] that the narcotics are held for purposes of sale based upon such matters as quantity, packaging and normal use of an individual; on the basis of such testimony convictions of possession for purpose of sale have been upheld.' [Citations.]" (*People v. Parra* (1999) 70 Cal.App.4th 222, 227; *People v. Carter* (1997) 55 Cal.App.4th 1376, 1378; *People v. Harris*, *supra*, 83 Cal.App.4th at p. 375.) It cannot be said that Officer Goldstein lacked experience. Furthermore, it is the role of the trier of fact to credit such opinion or reject it. (*People v. Harris*, *supra*, at p. 375.)

Moreover, the fact that minor had five cell phones at his bedside is telling. It strains credulity to believe that minor did not know that minutes could be added to the phones. If he believed the phones were useless, it is reasonable to assume he would have discarded them. It is not reasonable to speculate that the 25 plastic baggies found in the dresser drawer were left over from minor's prior selling activity, and the juvenile court could reasonably discredit minor's statement that he did not know he had them.

Under the totality of the evidence, including minor's two prior arrests for possession for sale of narcotics, there was sufficient substantial evidence presented by the prosecution. Many factors may indicate an intent to sell as opposed to an intent to use personally, such as the presence of scales and pay/owe sheets (whose absence is noted by minor), but not all factors will be present in every case. It is not the function of the reviewing court to reweigh or reinterpret the evidence or assess the credibility of witnesses. (*People v. Alcala* (1984) 36 Cal.3d 604, 623.) """"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment."""" (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) The evidence was sufficient to support the true finding, and minor suffered no due process violation.

DISPOSITION

The order appealed from is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ